REMARKS

Claims 7-24 are pending. Claims 7, 15, 19, and 22-24 are independent.

Rejections Under 35 U.S.C. § 102

Claims 7, 15, 19, and 22-24 are rejected under 35 U.S.C. § 102(e) as being anticipated by Benmohamed et al. Applicants respectfully traverse.

Initially, Applicants point out that MPEP § 707.07(g) specifies that piecemeal examination should be avoided as much as possible. Applicants assert that the present Application has been subject to several non-final rejections presented in piece-meal fashion.

Applicants submit that Benmohamed et al. fail to disclose or suggest a method of time out control comprising, at least: "inserting channel delay in data being carried over a communication channel to increase a length of time required for a time out and decrease a number of ramp up times" as recited in claim 7, and as somewhat similarly recited in claims 15, 19 and 22-24.

The Examiner alleges that FIG. 2, Col. 5, lines 57-63, and Col. 23, lines 57-63 teach this feature. However, FIG. 2, and the discussion thereof discloses that a network topology is perturbed by optimization processor 18, with a new network cost being evaluated in accordance with steps 202 and 204. The network may be perturbed by link augmentation or link deloading. In link augmentation, a graph representing the network is augmented with additional links and/or capacities until all the demands can be routed. In link deloading, lightly loaded links are removed to yield a final topology. Accordingly, Applicants submit that link deloading and link augmentation are not the same as inserting channel delay in data. For at least this reason, the

rejection fails, as Benmohamed et al. fail to anticipate each feature of the claims, as required by 35 U.S.C. § 102.

The Examiner further alleges that Col. 5, lines 57-63 teaches an insertion of channel delay in data. However, Applicants assert that this passage does not disclose what the Examiner alleges. Col. 7, lines 57-63 generally discuss parameters involved in a computation of a required link capacity. But computing a required link capacity is not the same as inserting channel delay in data. For at least this additional reason, Applicants submit that Benmohamed et al. is deficient.

The Examiner further alleges that Col. 23, lines 57-63 teaches an insertion of channel delay in data. However, Col. 23, lines 57-63 actually describe that a congestion window is halved when a packet loss is detected, and that TCP window flow control may experience timeouts which make the window decrease to a value of one packet followed by a slow-start model. Applicants further submit that halving of a congestion window or experiencing timeouts is not the same as inserting channel delay in data. For at least this additional reason, Applicants submit that Benmohamed et al. is deficient.

Therefore, for at least the above reason, Benmohamed et al. does not teach, disclose, or suggest inserting channel delay in data being carried over a communication channel to increase a length of time required for a time out and decrease a number of ramp up times, as recited in claim 7 and similarly recited in claims 15, 19, and 22-24. Applicants respectfully request that the art grounds of rejection be withdrawn.

Rejections Under 35 U.S.C. § 103

Claims 8-14, 16-18, and 20-21 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Benmohamed et al. in view of Kingdon et al. (U.S. Patent No. 6,185,428 B1) and Popovic (U.S. Patent No. 6,567,482). Applicants respectfully traverse.

Applicants note that the primary reference to Benmohamed et al. is commonly owned by the Assignee Lucent Technologies Inc.. As such, and in view of recent changes to U. S. Patent Law, this reference may be removed as prior art in obviousness rejections under 35 U.S.C. § 103/102(e) in new or continuing applications, so long as the reference was commonly owned with the claimed subject matter at the time the present invention was made.

Essentially, the AIPA (enacted November 29, 1999) provides that an application filed after November 29, 1999 is subject to the new provisions of 35 U.S.C. § 103(c). As such, no obviousness rejection can be made based on a patent's filing date (a § 103/102(e) rejection), if the patent and application are commonly owned.

Accordingly, to disqualify a reference under 35 U.S.C. § 103(c), Applicants need to supply evidence that the invention described in the application for patent and the invention described in the "prior art" reference applied against the application were commonly owed by, or subject to an obligation of assignment to, the same person, at the time the invention in the application for patent was made. The time requirement "at the time the invention was made" is required by statute. See 35 U.S.C. § 103(c).

Applications and references will be considered by the Examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the

application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Thus, a statement, by itself, will be sufficient evidence. See the "Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. § 103(c)," 1241 OG 96 (Dec. 26, 2000).

In light of the above, Applicants' representative submits that the present application for patent and U.S. Patent No. 6,240,463 to Benmohamed et al. (prior art reference applied against the application) were commonly owned by, or subject to an obligation of assignment to, Lucent Technologies Inc. at the time the invention of the present application was made.

Therefore, Benmohamed et al. cannot be used as a prior art reference under 35 U.S.C. § 103(c). Accordingly, the rejections of remaining claims 8-14, 16-18, and 20-21 under 35 U.S.C. § 103 as being unpatentable over Benmohamed et al. in view of Kingdon et al. and Popovic must therefore be withdrawn by the Examiner, as Benmohamed et al. cannot be used as a 102(e) reference in a 103 rejection..

CONCLUSION

Accordingly, in view of the above remarks, reconsideration of the objections and rejections and allowance of each of claims 7-24 in connection with the present application is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Gary D. Yacura at the telephone number of the undersigned below.

In the event this Response does not place the present application in condition for allowance, applicant requests the Examiner to contact the undersigned at (703) 668-8000 to schedule a personal interview.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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By 45,274

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